



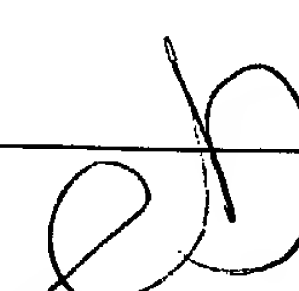
UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,768	07/13/2001	Florence L'Alloret	210578US0	1465
22850	7590	06/30/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			YOON, TAE H	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/903,768	Applicant(s) L'ALLORET ET AL.	
	Examiner Tae H Yoon	Art Unit 1714	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-28 and 34-42.

Claim(s) withdrawn from consideration: 29-33.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.


Tae H Yoon
Primary Examiner
Art Unit: 1714

ATTACHMENT TO ADVISORY ACTION

The incorporation of the limitation (particular molar mass) found in the specification into the claim after final rejection raises new issues that would require further search and consideration, and thus the amendment is denied of the entry. A partial entry is not permitted and thus the entry of claims 39 and 41 is denied also.

Applicant's argument against Simonnet al based on the amendment being denied of the entry has no little probative value. The use of any additive such as Poloxamer in O/W nanoemulsion would increase viscosity and applicant failed to show that the examples of Simonnet al would not increase viscosity with the addition of said Poloxamer.

Even though Bollens does not specify a particular size of oil globules as stated by applicant, Bollens teaches the use of a high mechanical shearing in examples 1 and 2, and applicant failed to show said examples do not yield the recited nanoemulsion comprising oil globules with a size of less than 100 nm. Said examples are not the mere happenstances contrary to applicant's assertion since the detailed mixing method is taught. Applicant asserts that Bollens teaches microemulsions at col. 3, line 49, and thus his compositions cannot be nanoemulsions. But the examiner disagrees with such assertion since Bollens also teaches milks, creams and lotions at the same col. 3, line 49 and in examples, and the use of nanoemulsions for said milks, creams and lotions is an inherent practice. One does not need to state a particular state or size of emulsions as long as one describes inherent properties. Bollens teaches vesicles having size of

Art Unit: 1714

20-500 nm even though they are not oil globules and an emulsion having such size is a nanoemulsion.

Bollens and Simonnet et al teach employing gelling and thickening agents, and thus the use of the water-soluble nonionic polymer of the secondary references in Bollens and Simonnet et al is a *prima facie* obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tae H Yoon
Primary Examiner
Art Unit 1714

THY/June 23, 2004